

In Illinois, construction contractors are deemed the end users of tangible personal property that is purchased for incorporation into real property. As end users of such tangible personal property, contractors incur a Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

December 21, 1999

Dear Xxxxx:

This letter is in response to your letter dated November 11, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I would appreciate your written confirmation or advice regarding the sales tax, use tax and Retail Occupation Tax ('ROT') treatment of this situation:

A. Facts

Custom Kitchen Cabinets. Purchaser orders custom cabinets for a from a cabinet company (the 'Seller') that has a kitchen cabinet showroom and store in CITY. The contract between Purchaser and Seller for the custom cabinets includes, separately stated, installation of the cabinets. Seller then adds an amount called "Sales Tax" to its contract with Purchaser and collects Sales Tax from Purchaser in an amount equal 8.75 percent of the full cost of the cabinets (not including the separately stated installation charge). When subsequently questioned about the validity of adding sales tax, the Seller states that the Sales Tax is required to be collected by law on the sale of the cabinets from Seller to Purchaser.

B. Legal Analysis

Section 130.1940(c) states that no ROT is payable by construction contractors on cabinets where the tangible personal property is incorporated into a structure as part of a construction contract that includes installation.

Please confirm that Seller is not required (and not permitted) to assess or collect sales tax from Purchaser on the sale of cabinets from Seller to Purchaser.

Thank you for your assistance on these questions.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 concerning the tax liabilities of contractors in Illinois. The term construction contractors includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term contractor means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners.

In Illinois, construction contractors are deemed the end users of tangible personal property that is purchased for incorporation into real property. As end users of such tangible personal property, contractors incur a Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

The customers of construction contractors incur no Use Tax liability, and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the contractors for their tax liability. Please note that this reimbursement cannot be billed to customers as "sales tax," but can be listed on the bill as a reimbursement of tax. If the bill reflects "sales tax," the contractor is making an overcollection of tax. All overcollections must either be turned over to the Department or refunded to the customer. Also, a knowing overcollection constitutes a Class 4 felony.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte  
Associate Counsel